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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,766	12/11/2003	Yoshio Tomoda	42760-0300	1821
21611 7590 06/20/2007 SNELL & WILMER LLP (OC) 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 06/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,766	Applicant(s) TOMODA ET AL.	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-60 is/are pending in the application.
- 4a) Of the above claim(s) 49-51 and 55-57 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58-60 is/are allowed.
- 6) ☒ Claim(s) 21-49, 52-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Newly submitted claims 49-51 and 55-57 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new claims are directed to a method of making noodles comprising the specific steps steaming the noodles, applying additives after steaming and frying the noodles. This method is independent from the method originally claimed because of the specific sequencing of the processing steps. Also, the method originally claimed is not directed to a method of making fried noodles. If the method was originally present, it would have been subjected to a restriction requirement.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 49-51, 55-57 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 21-23, 25,28,29,31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Karppanen et al.

Karppanen et al disclose a method for preparing food comprising dough or batter to be cooked under heat. The method comprises the steps of adding to the food prior to heating an effective amount of at least addition selected from magnesium chloride, calcium chloride and heating the foods. The foods includes bread, cookies, biscuit-like product, seasoning etc.. The calcium compound can be another other physiologically acceptable calcium compound. Examples 1 and 2 shows dough products containing the additive and the dough is subjected to baking at temperature of 230 degree C.

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Example 1 also shows the additives to be in the range of .3% which falls within the range claimed.

Karppanen et al disclose adding the same food additives as claimed and the additives are added prior to heating; thus, the property of decreased acrylamide content is inherent in the food products prepared using the additives disclosed by Karppanen et al. The claims recite the step of adding to the food prior to heating an effective amount of additive and Karppanen et al disclose such step.

Claims 24,26,27 and 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Karppanen et al.

Karppanen et al do not specifically disclose frying, stir-frying or roasting, the foods as claimed and the use of calcium oxide.

It would have been obvious to one skilled in the art to determine the method of heating depending on the types of food products. For example, it would have been obvious to fry, stir-fry or roast meat products. It would also have been obvious to add the additives in any other food products when desiring the benefits disclosed by Karppanen et al in such food products. This would have been an obvious matter of preference. It would have been obvious to use calcium oxide because Karppanen et al disclose other form of calcium can be used and calcium oxide is known to be used in the food products. Calcium oxide is commonly used in making masa flour for production of tortilla chip, taco etc...

Claims 35, 42-44, 46-47 rejected under 35 U.S.C. 102(e) as being anticipated by Bouwmeesters et al .

Bouwmeesters et al disclose a method of preparing food to be cooked under heat. The method comprises the steps of adding an additive which comprises at least one ions selected from copper, barium and iron. The additive is added before frying, baking, cooking or boiling. (see col. 3 lines 37-42, col. 4 lines 28-31 and 55-60)

Bouwmeesters et al disclose adding the same food additive as claimed and the additive is added prior to heating; thus, the property of decreased acrylamide content is inherent in the food products prepared using the additives disclosed by Bouwmeesters et al. The claim recites the step of adding to the food prior to heating an effective amount of additive and Bouwmeesters et al disclose such step.

Claims 36-41,45,48 rejected under 35 U.S.C. 103(a) as being unpatentable over Bouwmeesters et al.

Bouwmeesters et al do not disclose the types of food as claimed, food containing cereal flour and starch, the specific temperature as claimed and the amount as claimed.

It would have been obvious to add the additive disclosed by Bouwmeesters et al to any food product when desiring to increase the flavor to such food products. It would have been obvious to determine the temperature depending on the type of food.

Bouwmeesters et al disclose the same method of heating as claimed; thus, it is obvious the temperature can fall within the range claimed. It would have been obvious to vary the amount of ion within the guidance disclosed by Bouwmeesters et al through routine experimentation. Bouwmeesters et al teach the calcium ions are in the range of 1-10%.

Claims 52-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder et al.

Schroeder et al disclose applying to uncooked potato pieces an effective amount of an additive calcium chloride and there after frying the pieces at a temperature of about 150-200 degree C. The application is done by dipping the pieces into solution containing calcium chloride. The amount of calcium chloride is at least about 100ppm, e.g. about 200-1000ppm or somewhat more by weight of the potato pieces. (see col. 2 lines 18-38, col. 3 lines 25-45).

Schroeder et al disclose the method steps as claimed. The amount of calcium chloride is 1000ppm or somewhat more; 1000ppm is equal to .1% which falls within the amount disclosed. Thus, the amount disclosed by Schroeder is the same as the effective amount. The additive is the same and the effective amount is the same; thus, it is inherent the potato pieces have decrease acrylamide content as claimed.

Claims 58-60 are free of prior art because there is no teaching in the prior art of applying ions selected from Fe, Cu and Ba to uncooked potato piece and then frying the pieces.

In the response filed 4/6/07, applicant argues the Karpennan et al method is not identical with the claimed method and food product because the claims entirely avoid adding plant sterols or stannols. This argument is not persuasive because the claimed method and food product do not exclude the inclusion of plant sterols or stannols disclosed in Karpennan et al. The Karpennan et al disclose adding ions from sources such as calcium chloride, magnesium chloride and other calcium compound. The ions added to food products which are then subjected to heating. These are the same method steps claimed and the ions are the same. Thus, the property of decreasing

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acrylamide is inherent in the Karpennen et al method and food products. The claimed process corresponds to that of the reference, the recognition of an inherent result realized thereby and which result must necessarily also be obtained in the prior art reference, then the result cannot be basis for patentable distinction (see In re Best 195 USPQ 430). Applicant argues the claims are directed to a purpose. The purpose of the claims is a property resulting from the use of the ions before cooking. Since Karpennen et al disclose the same ions, it is inherent the same property will be obtained. If applicant contends that the property is not inherent, the burden of proof is shifted to applicant to show that it is so. Applicant's claims are not directed to new uses of known process; it is a recognition of an inherent result which is not the basis for patentable distinction unless applicant can show that the property is not inherent.

With respect to the Bouwmeesters et al reference, applicant argues the beads or encapsulate are unlikely to act as an otherwise uniformly distributed ingredient and unlikely to reduce the formation of acrylamide. The argument is not supported by factual evidence. The key work is "unlikely"; applicant has not presented any evidence to show that the beads or encapsulate are not distributed uniformly and do not reduce the formation of acrylamide.

Applicant mentions new claims 49-51; these claims are not entered as explained above. New claims 52-54 are rejected as shown above over a new reference. Applicant makes reference to the 132 declaration submitted with the response. The declaration is not relevant to the issue at hand because it is directed to testing fried noodles; the claims directed to a method of making fried noodles are not entered.

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Applicant's arguments filed 4/6/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 14, 2007


LIEN TRAN
PRIMARY EXAMINER
